

allegations of the Complaint over an eleven-page recitation of facts without direct quotations and divert the Court's attention away from the four corners of the pleading. By seeking a hearing, the Plaintiffs attempt a second opportunity to explain away the clear language of the Complaint. Ultimately, this hearing would delay, rather than expedite.

Second, all parties seek attorneys' fees related to the Partial Motion to Dismiss and permitting a hearing would unnecessarily increase these costs.¹ As of this filing, the attorneys' fees incurred in bringing and defending the Defendants' Partial Motion to Dismiss have already been incurred. Permitting a hearing based upon a Rule 12 motion would substantially increase these costs and result in inefficiency. Defendants believe they are entitled to an award of costs and fees in this instance, but also feel obligated to limit such expenses to only those that are necessary and proper. The costs associated with a hearing on the issue of partial dismissal does not appear to necessarily meet those requirements.

Respectfully submitted,

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¹ The Defendants seek their attorneys' fee in the Partial Motion to Dismiss based upon Article 5 of the UCC (as adopted in the Tennessee Code) which awards attorneys' fees to the successful party when an action is brought pursuant to that article. The Plaintiffs seek attorneys' fees in opposing the Partial Motion to Dismiss, not under Fed. R. Civ. P. 11 (which requires a safe-harbor notice that has not been given by the Plaintiffs), but based upon the "inherent equitable power" of the Court for "bad faith" or "frivolous" conduct.

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2011, a copy of the foregoing was filed electronically. Notice of filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access the filing through the Court's electronic filing system.

/s/ Andrew L. Colocotronis

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